

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHARD CARL BROWN,

Defendant.

Case No.: 2:12-cr-00097-GMN-VCF

ORDER

Pending before the Court is Defendant Richard Carl Brown's ("Defendant's") Motion for Compassionate Release, (ECF No. 216). The Government filed a Response, (ECF No. 218). Defendant did not file a Reply.¹

Also pending before the Court is the Government's Motion for Leave to File Sealed Exhibit, (ECF No. 219). Defendant did not file a Response.

For the reasons discussed below, the Court **DENIES** the Motion for Compassionate Release and **GRANTS** the Motion to Seal.

I. BACKGROUND

On February 15, 2013, a jury found Defendant guilty on all counts of the Indictment: (1) Count One: Advertising Child Pornography in violation of 18 U.S.C. § 2251(d)(1)(A); (2) Count Two: Transporting Child Pornography in violation of 18 U.S.C. § 2252A(a)(1); (3) Count Three: Receipt of Child Pornography in violation of 18 U.S.C. § 2252A(a)(2); and (4) Count Four: Possession of Child Pornography in violation of 18 U.S.C. § 2252A(a)(5)(B). (*See* Jury Verdict, ECF No. 91); (*see also* Indictment, ECF No. 1). The Honorable Robert C. Jones sentenced Defendant to 180-months custody as to Counts 1–3, to run concurrently, and 180-

¹ Defendant's Counsel also filed a Notice of Non-Supplementation, indicating that no supplementation is necessary. (Notice of Non-Supplementation at 1, ECF No. 217).

1 months custody as to Count Four, also to run concurrently with Counts 1–3. (*See* J., ECF No.
2 113). Defendant appealed, and the Ninth Circuit vacated the convictions and remanded for a
3 new trial. (*See* Order on Mandate, ECF No. 136). At the same time, the case was reassigned to
4 the instant Court. (*See id.*).

5 On May 29, 2018, Defendant pleaded guilty to one count of Receipt of Child
6 Pornography in violation of 18 U.S.C. §§ 2252A(a)(2) and (b); and one count of Possession of
7 Child Pornography in violation of 18 U.S.C. § 2252A(a)(5)(B). (*See* Mins. Proceedings,
8 Change of Plea, ECF No. 204); (*see also* Indictment). On September 13, 2018, the Court
9 sentenced Defendant to a total of 100-months custody per count as to Counts 3 & 4, to run
10 concurrently. (*See* Mins. Proceedings, Sentencing, ECF No. 210); (*see also* Am. J., ECF No.
11 213). Defendant is presently in custody at Federal Correctional Institution (“FCI”) Big Spring,
12 and he petitions this Court for compassionate release. (*See generally* Mot. Compassionate
13 Release (“MCR”), ECF No. 216).

14 **II. LEGAL STANDARD**

15 The compassionate release provision of 18 U.S.C. § 3582(c)(1)(A), as amended by the
16 First Step Act, Pub. L. No. 115-391, 132 Stat. 5194 (Dec. 21, 2018), authorizes the sentencing
17 court to modify a term of imprisonment in limited circumstances, upon a motion by the
18 defendant. 18 U.S.C. § 3582(c)(1)(A). The sentencing court may order compassionate release,
19 “if after considering the factors set forth in 18 U.S.C. § 3553(a),” the defendant has
20 demonstrated: (1) he has exhausted his administrative remedies; and (2) “extraordinary and
21 compelling reasons” warrant a reduction in his sentence. 18 U.S.C. § 3582(c)(1)(A). The
22 Court must also consider whether a reduction in sentence is consistent with applicable policy
23 statements issued by the United States Sentencing Commission. *Id.* While there is currently no
24 applicable policy statement for § 3582(c)(1)(A) motions filed by a defendant, “the Sentencing
25 Commission’s statements in U.S.S.G § 1B1.13,” which apply to § 3582(c)(1)(A) motions filed

by the Bureau of Prisons (“BOP”), “may inform a district court’s discretion for § 3582(c)(1)(A) motions filed by a defendant, but they are not binding.” *United States v. Aruda*, No. 20-10245, 2021 WL 1307884, at *4 (9th Cir. April 8, 2021). Under U.S.S.G. § 1B1.13, “extraordinary and compelling reasons” include, among other things, age, terminal illnesses, and medical conditions “that substantially diminish[] the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.” Further, prior to reducing a sentence, U.S.S.G. § 1B1.13 directs courts to determine whether the defendant is a danger to the safety of any other person in the community. *Id.* The court may also consider “other reasons” including a “reason other than, or in combination with” a reason specifically provided in the Sentencing Guidelines. *Id.* The decision to grant compassionate release is in the sentencing court’s discretion. *See United States v. Wade*, 2:99-cr-00257-CAS-3, 2020 WL 1864906, at *5 (C.D. Cal. Apr. 13, 2020).

III. DISCUSSION

The Court begins and ends its analysis with the extraordinary and compelling reasons Defendant proffers for release. Defendant argues that COVID-19, combined with his underlying health conditions, provides extraordinary and compelling reasons for his release. (*See generally* MCR at 5). Specifically, Defendant asserts that his lifelong chronic asthma and bronchitis, combined with his mid-diagnosis neurological disorder, requires special medical care that the Bureau of Prisons (“BOP”) cannot easily provide. (*Id.*). He thus requests compassionate release to home confinement for his safety and so that he can properly address his medical issues. (*Id.*).

Defendant, however, has received the Moderna vaccination for COVID-19, which has approximately 94.1% efficacy. (*See* Sealed Ex. 1 to Govt’s Resp., ECF No. 220). The Centers for Disease Control have advised that the vaccine effectively protects individuals against serious health outcomes from the virus. *See* Centers for Disease Control, COVID-19: Moderna,

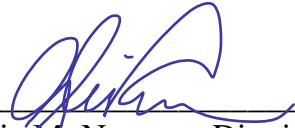
1 <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines/Moderna.html> (last
2 updated August 19, 2021). The Government argues, and the Court agrees, that Defendants'
3 Motion should be denied because of his vaccination status. *See also United States v. Thompson*,
4 No. 2:16-cr-00230-GMN-DJA-1, 2021 U.S. Dist. LEXIS 106217, at *4 (D. Nev. June 7, 2021)
5 (similarly denying a Motion for Compassionate Release due to the defendant's vaccination
6 status). Accordingly, the Court denies Defendant's Motion for Compassionate Release.

7 **V. CONCLUSION**

8 **IT IS HEREBY ORDERED** that Defendant's Motion for Compassionate Release,
9 (ECF No. 216), is **DENIED**.

10 **IT IS FURTHER ORDERED** that the Government's Motion for Leave to File Sealed
11 Exhibit, (ECF No. 219), is **GRANTED**.²

12 Dated this 8 day of October, 2021.

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17 Gloria M. Navarro, District Judge
18 UNITED STATES DISTRICT COURT
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² The Exhibit contains Defendant's confidential medical records. Accordingly, the Court finds good cause to seal the record.